THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.21284 OF 2006

DATED: 28-06-2007

BETWEEN

K. Nanaji,
S/o. Late Kondal Rao,
C/o. M/s. Vinayaka Geetha
Bar & Restaurant, D.No.3-4,
Adarshnagar, Near old Dairy
Farm, Visakhapatnam and
another.

...PETITIONERS

AND

The Commissioner of Prohibition
And Excise, Andhra Pradesh,
Hyderabad and another.

...RESPONDENT

ORDER:

The first petitioner submits that he was granted bar license in the name and style of Vinayaka Geetha Bar and Restaurant,
at premises bearing D.No.3-4, Adarshnagar, Near Old Dairy Farm, Visakhapatnam vide proceedings in Rc.No.2431/2003/C3 dated 25.09.2003 issued by the Prohibition and Excise Superintendent, Visakhapatnam. He further submits that he commenced the bar and restaurant business from 01.10.2003 and the period of currency of the licence is valid up to 30.09.2004. Thereafter, the Commissioner of Prohibition and Excise, who is the authority to grant licence for bars under the then Rules issued a show case notice under Section 32 of the Andhra Pradesh Excise Act calling upon the petitioner to show cause as to why his licence shall not be withdrawn

within 30 days from the date of the receipt of the notice in Cr.No.17496/2003/CPE/G2 dated 11.10.2003, which was served on the petitioner 20.10.2003.

He further submits that pursuant to the show cause notice, he closed the business on 20.10.2003 till the withdrawal notice was withdrawn on 28.04.2004. Thus, it is the case of the petitioner that he did not do any business for a period of four months from 20.10.2003 to 28.04.2004 except lifting meager quantity of liquor for the value of Rs.10,000/- vide transport permit No.9972 dated 30.11.2003.

2. Petitioner further submits that pursuant to his representation to grant remission of licence fee and to adjust the licence fee pertaining to the aforesaid period, the Commissioner got the matter enquired and passed order in Cr.No.13158/2004/CPE/G2 dated 21.09.2004 stating that APBCL, Visakhapatnam has stopped the supply of IL Stocks to the bar pursuant to the withdrawal notice and that the petitioner has not conducted any business from 20.10.2003 to 28.04.2004. Accordingly a direction was issued to adjust the proportionate licence fee for the period from 20.10.2003 to 28.04.2004 for the remaining period of the lease for the year 2004-05. As the order was not implemented the petitioners were constrained to file W.P.No.2099 of 2006 seeking implementation of the said orders of the Commissioner dated 21.09.2004 and this Court by order dated 03.02.2006 disposed the writ petition holding that the proceedings of the Commissioner are clear and no further clarification is required and the Superintendent of Prohibition and Excise being subordinate to the Commissioner is bound to implement the orders unless they were withdrawn before filing of the writ petition.

3. As on the date of disposal of the writ petition i.e. 03.02.2006 the said order of the Commissioner dated 21.09.2004 was not at all withdrawn but thereafter without issuing any notice or giving an opportunity to the petitioners, the Commissioner of Prohibition and excise passed orders in Cr.No.13825/04/CPF/G2 dated 28.03.2006 stating that the shop licence was

not withdrawn under Section 32 of the Act except issuing show cause notice and in the absence of any specific orders for closure of shop after expiry of 30 days pursuant to the show cause notice, it cannot be said that the shop of the petitioner was withdrawn and it was not functioning, in view of the fact that a transport permit was obtained on 30.11.2003 lifting liquor for value of Rs.10,000/-. Accordingly, the earlier order was withdrawn stating that it was passed erroneously but held that the petitioners are not entitled for any refund of the proportionate licence fee. Aggrieved by the said order this writ petition has been filed.

4. Though the learned counsel for the petitioners submits that the Commissioner of Prohibition and Excise is stopped from withdrawing the earlier order as per the order of this Court in WP.No.2099 of 2006 dated 03.02.2006, I am not inclined to accept the same as the earlier order was passed erroneously and contrary to the statute, therefore, it is open for the authorities to review their own order and rectify the same. However, admittedly the principles of natural justice have been violated, in the instant case, as neither notice has been issued nor opportunity has been given to the petitioners. I am of the opinion that the petitioners have fairly established the contention that they were prevented from carrying on the business as admittedly except lifting the stock as per transport permit dated 30.11.2003 there was no any lifting of liquor for carrying on the business, however, it is a matter of verification whether the shop of the petitioner was really closed or not. It is for the Commissioner to give a reasonable opportunity to the petitioners and pass appropriate orders.

Accordingly, the writ petition is allowed setting aside the order impugned and the matter is remitted to the first respondent for fresh consideration giving reasonable opportunity to the petitioners and to pass appropriate orders in accordance with law. There shall be no order as to costs.

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V. ESWARAIAH, J

June 28, 2007
DSK